

**Staff's Proposed Modifications to the  
REGULATION ORDER THAT ESTABLISHED  
A DISTRIBUTED GENERATION CERTIFICATION PROGRAM**

Amend sections 94200-94214, in article 3, subchapter 8, chapter 1, division 3 of title 17, California Code of Regulations, to read as follows:

**Article 3. Distributed Generation Certification Program**

**94200. Purpose.**

These regulations implement the program mandated by Health and Safety Code section 41514.9 for certification of electrical generation technologies. After January 1, 2003, it is unlawful to:

- (a) manufacture any Distributed Generation (DG) Unit for sale, lease, use, or operation in the State of California, or
- (b) sell or lease, or offer for sale or lease any DG Unit for use or operation in the State of California, or
- (c) purchase or lease any DG Unit for use or operation in the State of California,

unless the DG Unit is certified by the Air Resources Board pursuant to these regulations or is otherwise exempt from certification as hereinafter provided.

Any DG unit that was purchased or leased while the unit was certified can continue to be used by the owner or lessee after the certification has expired, or been suspended or revoked.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

**94201. Applicability**

After January 1, 2003, any DG Unit manufactured for sale, lease, use, or operation in the State of California; or any new DG Unit sold or leased, or offered for sale or lease, for use or operation in the State of California; or any DG Unit purchased or leased for use or operation in the State of California shall be certified by the Air Resources Board unless the DG Unit:

- (a) does not emit an air contaminant when operated,

- (b) is Portable,
- (c) is used only when electrical or natural gas service fails or for emergency pumping of water for fire protection or flood relief,
- (d) is not exempt from an air pollution control district or air quality management district's permitting requirements,
- (e) is part of a research operation for which the Executive Officer has given prior written approval, or
- (f) is operated as part of the DG Unit manufacturing process.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

#### 94202.       **Definitions and Acronyms**

For the purposes of these regulations, the following definitions apply:

- (a) **Air Contaminant.** Shall have the same meaning as set forth in section 39013 of the Health and Safety Code.
- (b) **Air Pollution Control Equipment.** Equipment that eliminates, reduces, or controls the issuance of air emissions.
- (c) **Applicant.** A manufacturer or manufacturer's designated agent applying for certification of a DG Unit.
- (d) **ARB.** The California Air Resources Board.
- (e) **Btu.** British thermal unit.
- (f) **CO.** Carbon monoxide.
- (g) **Combined Heat and Power (CHP).** A DG Unit that produces both electric power and process heat.
- (h) **Digester Gas.** Gases produced from the decomposition of sewage or animal waste. For the purposes of this certification program, units being certified for digester gas as the fuel shall be tested using a fuel stream composed of, by volume, 60 to 65 percent methane and 35 to 40 percent CO<sub>2</sub>.
- (i) **Distributed Generation (DG) Unit.** Electrical generation technologies that produce electricity near the place of use.

- (j) **District.** Shall have the same meaning as set forth in part 3, commencing with section 40000 of the California Health and Safety Code.
- (k) **Electrical Generation Technology.** Reciprocating engines, external combustion engines, combustion turbines, photovoltaics, wind turbines, fuel cells or any combination thereof.
- (l) **Executive Officer.** The Executive Officer of the California Air Resources Board or his or her designee.
- (m) **Executive Order.** An order issued by the Executive Officer of the Air Resources Board certifying compliance of a DG Unit with the applicable requirements of this article.
- (n) **Landfill Gas.** Gases produced from the decomposition and volatilization of materials in landfills. For the purposes of this certification program, units being certified for landfill gas as the fuel shall be tested using a fuel stream composed of, by volume, 42 to 46 percent methane, 34 to 38 percent CO<sub>2</sub>, and 18 to 22 percent N<sub>2</sub>.
- (o) **LPG.** Liquid Petroleum Gas, which for this certification program meets the standards of HD-5 propane.
- (p) **MW-hr.** Megawatt-hour.
- (q) **Natural Gas.** California Public Utility Commission (CPUC) quality natural gas.
- (r) **NOx.** Oxides of Nitrogen, expressed as NO<sub>2</sub>.
- (s) **Oil Field Waste Gas.** Gases produced from the drilling of oil wells and pumping of oil from wells **that are not eligible for delivery to the utility pipeline system**. For the purposes of this certification program, units being certified for oil field waste gas as the fuel shall be testing using a fuel stream composed of, by volume, 63 to 71 percent methane, 6 to 8 percent ethane, 9 to 11 percent propane, 7 to 9 percent CO<sub>2</sub>, and 7 to 9 percent carbon compounds with four or more carbon atoms per molecule.
- (t) **PM.** Particulate Matter
- (u) **Portable.** Designed and capable of being carried or moved from one location to another. Indicia of portability include, but are not limited to, wheels, skids, carry handles, dolly trailer, or platform. The DG unit is not portable if any of the following are true:

- (1) the DG unit or its replacement is attached to a foundation, or if not so attached, will reside at the same location for more than 12 consecutive months. The period during which the DG unit is maintained at a storage facility shall be excluded from the residency time determination. Any DG unit such as back-up or stand-by DG units, that replace DG unit(s) at a location, and is intended to perform the same or similar function as the DG unit(s) being replaced, will be included in calculating the consecutive time period. In that case, the cumulative time of all DG unit(s), including the time between the removal of the original DG unit(s) and installation of the replacement DG unit(s), will be counted toward the consecutive time period; or
  - (2) the DG unit remains or will reside at a location for less than 12 consecutive months if the DG unit is located at a seasonal source and operates during the full annual operating period of the seasonal source, where a seasonal source is a stationary source that remains in a single location on a permanent basis (at least two years) and that operates at that single location at least three months each year; or
  - (3) the DG unit is moved from one location to another in an attempt to circumvent the portable residency time requirements.
- (v) **Research Operation.** Investigation, experiment, or research to advance the state of knowledge or the state of the art.
- (w) **VOC.** Volatile organic compounds, expressed as hexane.
- (x) **Zero Emission Technology.** Any technology that does not emit an air contaminant as defined in section 94202(a).

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94203. **Requirements.**

- (a) On or after January 1, 2007, any DG Unit fueled by natural gas or LPG subject to this regulation must be certified pursuant to section 94204 to the following emission standards.

**Table 1 - 2007 Fossil Fuel Emission Standards**

Pollutant	Emission Standard (lb/MW-hr)
NO <sub>x</sub>	0.07
CO	0.10
VOCs	0.02

DG Units that use combined heat and power may take a credit to meet the emission standard above. Credit shall be at the rate of one MW-hr for each 3.4 million Btu's of heat recovered. To take the credit, the following must apply:

- (1) DG Units are sold with combined heat and power technology integrated into a standardized package by the Applicant; and
  - (2) DG Units achieve a minimum efficiency of 60 percent (useful energy out/fuel in) in the conversion of the energy in the fossil fuel to electricity and process heat.
- (b) Any DG Unit fueled by digester gas, landfill gas, or oil field waste gas subject to this regulation must be certified pursuant to section 94204 to the following emission standards.

**Table 2 - Waste Gas Emission Standards**

Pollutant	Emission Standard (lb/MW-hr)	
	On or after January 1, 2008	On or after January 1, 2013
NO <sub>x</sub>	0.5	0.07
CO	6.0	0.10
VOCs	1.0	0.02

DG Units that use combined heat and power may take a credit to meet the January 1, 2013, emission standard above. Credit shall be at the rate of one MW-hr for each 3.4 million Btu's of heat recovered. To take the credit, the following must apply:

- (1) DG Units are sold with combined heat and power technology integrated into a standardized package by the Applicant; and
  - (2) DG Units achieve a minimum efficiency of 60 percent (useful energy out/fuel in) in the conversion of the energy in the fossil fuel to electricity and process heat.
- (c) DG Units must be designed to meet applicable emission standards for 15,000 hours of operation when operated and maintained according to the manufacturer's instructions.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

**94204. Certification Procedure.**

- (a) Each application for certification and the fee, as specified in section 94210, shall be submitted in a format approved by the Executive Officer and include, at a minimum, the following information:
  - (1) name of the Applicant, a contact person, mailing address (street and electronic), and telephone number;
  - (2) a description of the DG Unit and model number;
  - (3) maximum output rating (kilowatt);
  - (4) fuel type for which certification is being sought;
  - (5) type or description of any emission control equipment used;
  - (6) listing of components of the DG unit most critical to ensuring continued compliance with the emission limits; and,
  - (7) emission test data, supporting calculations, quality control/assurance information, and all other information needed to demonstrate compliance with the requirements in sections 94203 (a) through (c).
- (b) Within 30 calendar days of receipt of an application, the Executive Officer shall inform the Applicant in writing if the application is complete or deficient. If deemed deficient, the Executive Officer shall identify the specific information required to make the application complete.
- (c) Within 60 calendar days of the application being deemed complete, the Executive Officer shall issue or deny certification.
- (d) Upon finding that a DG Unit meets the requirements of this article, the Executive Officer shall issue an Executive Order of Certification for the DG Unit. The Executive Officer shall provide a copy of the Executive Order of Certification to the Applicant.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

**94205. Voluntary Certification.**

DG Units that do not emit air contaminants while operating may submit to the Executive Officer for the purpose of voluntary certification the information

requested in section 94204 (a)(1) through (3), and any other information necessary to demonstrate that no air contaminants are emitted.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

**94206. Labeling Requirements.**

- (a) The Applicant shall affix a certification label on a visible location on each certified DG Unit.
- (b) The certification label must be of durable material and be permanently attached to the DG Unit.
- (c) The certification label must contain the year of the conforming emission standards, the fuel type used, and the number of the Executive Order of Certification.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

**94207. Testing.**

- (a) Sampling methodology used must conform to ARB testing procedures. Alternate or modified test methods may be used if approved in writing by the Executive Officer prior to use for certification.

Testing shall be conducted in accordance with the following methods:

NO <sub>x</sub> , CO, and Oxygen:	ARB Test Method 100 (as adopted on July 28, 1997)
VOC	South Coast AQMD Method 25.3 (as published in March 2000)
Gas Velocity and Flow Rate:	ARB Test Methods 1, 2, 3, and 4 (as adopted on July 1, 1999)

- (b) Natural gas, LPG, digester gas, landfill gas, or oil field waste gas, as defined in section 94202, shall be used for certification testing. Other fuels may be used upon the written approval of the Executive Officer.
- (c) Any additional control equipment or other devices that affect emissions shall be applied to the DG Unit and tested as marketed for operation.

- (d) Testing parameters.
  - (1) A minimum of three valid test runs must be conducted. Each test is to be run consecutively. Justification for invalid test runs or time gaps between runs must be included in the test report.
  - (2) Testing commences after the DG Unit has reached stable operation.
  - (3) Each run must be conducted at 100 percent of generator gross output.
    - (A) A load bank may be used to establish the load.
    - (B) The DG Unit must be operated for a sufficient period of time to demonstrate stability in the emission reading at constant load and to ensure the collection of representative and quantifiable samples.
  - (4) Generator output (MW-hr), based on gross output, shall be measured during each valid test run. A calibrated electric meter shall be used for the measurements. The meter shall meet the American National Standards Institute's Code for Electricity Metering (ANSI C12.1-as of July 9, 2001).
  - (5) The emission rate shall be expressed in lb/MW-hr.
- (e) Alternate testing procedures may be used upon written approval of the Executive Officer.
- (f) Additional testing may be required by the Executive Officer as part of the certification process.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94208. **Recordkeeping.**

- (a) The Applicant must retain all information used for the certification application.
- (b) Upon request of the Executive Officer, the Applicant will submit information to the ARB on the number and location of certified DG Units that have been sold in California.



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- (c) Upon request of the Executive Officer, the Applicant will submit to the ARB the serial numbers and emission durability information of certified DG Units sold in California.
- (d) The Applicant shall maintain a log detailing how often components listed pursuant to section 94204 (a)(6) are replaced, in terms of hours of operation.
- (e) All records maintained pursuant to this certification program must be retained until the certification is surrendered, expired, or revoked.
- (f) Records shall be submitted to the ARB upon request of the Executive Officer.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

**94209. Recertification.**

- (a) Certification is valid for four years, except as specified in section (b) below.
- (b) Digester gas, landfill gas, and oil field waste gas fueled DG units certified pursuant to the **January 1, 2008**, emission standards of section 94203 (b) shall be valid for four years, but no later than **January 1, 2013**.
- (c) To recertify, the applicant must submit information required in section 94204 (a) (1) through (6), detail any changes to the design or operation of the DG unit, and provide information to satisfy any new certification requirements since the time of initial certification or recertification.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

**94210. Fees.**

- (a) Fees shall be due and payable to the Executive Officer at the time an application is filed.
- (b) DG Units subject to these regulations will be assessed a fee of \$7,500 for certification and/or recertification.
- (c) DG Units seeking voluntary certification through section 94205 will be assessed a fee of \$2,500 for certification and/or recertification.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

**94211. Inspection.**

The Executive Officer, or an authorized representative of the Executive Officer, may periodically inspect manufacturers of DG Units for sale, lease, use or operation in California; distributors and retailers selling or leasing DG Units for use or operation in the state of California; and, operators of DG Units in California. The Executive Officer, or an authorized representative, may conduct any tests deemed necessary to ensure compliance with these regulations. Failure of a manufacturer, distributor, retailer, or operator to allow access for inspection purposes shall be grounds for suspension or revocation of certification.

The Executive Officer reserves the right to require testing of any in-use units that were certified pursuant to this program.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

**94212. Denial, Suspension or Revocation of Certification.**

- (a) The Executive Officer for just cause may deny, suspend or revoke an Executive Order of Certification in any of the following circumstances:
  - (1) the Applicant has materially misrepresented the meaning, findings, effect or any other material aspect of the certification application, including submitting false or incomplete information in its application for certification regardless of the Applicant's personal knowledge of the falsity or incompleteness of the information;
  - (2) the test data submitted by the Applicant to show compliance with this regulation have been found to be inaccurate or invalid; or,
  - (3) the certified unit has failed in-use to comply with the findings set forth in the Executive Order. For the purposes of this section, noncompliance with the certification may include, but is not limited to:
    - (A) a repeated failure to perform to the standards set forth in this article;
    - (B) modification by the manufacturer of the DG Unit that results in an increase in emissions or changes the efficiency or operating conditions of such unit, without prior notice to and approval by the Executive Officer;

- (C) failure to comply with request to test in-use DG units within 60 days of a written request by the Executive Officer; or,
  - (D) failure to submit records required per section 94208 (d) within 60 days of a written request by the Executive Officer.
- (b) A manufacturer may be denied certification or subject to a suspension or revocation action pursuant to this section based upon the actions of an agent, employee, licensee, or other authorized representative.
  - (c) The Executive Officer shall notify a manufacturer by certified mail of any action taken by the Executive Officer to deny, suspend or revoke any certification granted under this article. The notice shall set forth the reasons for and evidence supporting the action(s) taken. A suspension or revocation is effective upon receipt of the notification.
  - (d) A manufacturer may request that the suspension or revocation be stayed pending a hearing under section 94213. In determining whether to grant the stay, the hearing officer shall consider the reasonable likelihood that the manufacturer will prevail on the merits of the appeal and the harm the manufacturer will likely suffer if the stay is not granted. The Executive Officer shall deny the stay if the adverse effects of the stay on the public health, safety, and welfare outweigh the harm to the manufacturer if the stay is not granted.
  - (e) Once an Executive Order of Certification has been suspended pursuant to (a) above, the manufacturer must satisfy and correct all noted reasons for the suspension and submit a written report to the Executive Officer advising him or her of all such steps taken by the manufacturer before the Executive Officer will consider reinstating the certification.
  - (f) After the Executive Officer suspends or revokes an Executive Order of Certification pursuant to this section and prior to commencement of a hearing under section 94213, if the manufacturer demonstrates to the Executive Officer satisfaction that the decision to suspend or revoke the certification was based on erroneous information, the Executive Officer will reinstate the certification.
  - (g) Nothing in this section shall prohibit the Executive Officer from taking any other action provided for by law for violations of the Health and Safety Code.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

94213.       **Appeals.**

Any manufacturer whose application or certification has been denied, suspended, or revoked may request a hearing to review the action as provided herein.

(a)     Hearing Procedure.

Except as provided for in section 94213(b) below, any appeal pursuant to this section 94213 shall be conducted in accordance with the Administrative Hearing Procedures for Petitions for Review of Executive Officer Decisions, Title 17 California Code of Regulations, Division 3, Chapter 1, Article 2, commencing with section 60055.1.

(b)     Review by written submission.

- (1)     In lieu of the hearing procedure set forth in (a) above, a manufacturer may request that a review of the Executive Officer's decision be conducted by a hearing officer solely by written submission.
- (2)     A manufacturer may request a review of the Executive Officer's decision to deny, suspend or revoke a certification no later than 20 days from the date of issuance of the notice of the denial, suspension, or revocation. Such request shall include, at a minimum, the following:
  - (A)     name of the manufacturer, the name, address and telephone number of the person representing the manufacturer and a statement signed by a senior officer of the manufacturer warranting that the representative has full authority to bind the manufacturer as to all matters regarding the appeal;
  - (B)     copy of the Executive Order granting certification and the written notification of denial;
  - (C)     a statement of facts and explanation of the issues to be raised setting forth the basis for challenging the denial, suspension, or revocation (conclusory allegations will not suffice) together with all documents relevant to those issues; and
  - (D)     the signature of the representative named in (A) above.

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- (3) Upon receipt of a request for review, the request shall be referred to the administrative hearing office of the state board for assignment of a hearing officer.
- (4) Within 15 days of appointment of a hearing officer:
  - (A) ARB staff shall submit a written response to the manufacturer's submission and documents in support of the Executive Officer's action no later than 10 days after receipt of the manufacturer's submission;
  - (B) within 7 days of receipt of the ARB response, the manufacturer may submit one rebuttal statement which shall be limited to the issues raised in the ARB rebuttal;
  - (C) if the manufacturer submits a rebuttal, ARB staff may, within 7 days of receipt of the manufacturer's rebuttal, submit one rebuttal statement which shall be limited to the issues raised in the manufacturer's rebuttal; and
  - (D) the hearing officer shall receive all statements and documents and render a written decision. The hearing officer's decision shall be mailed to the manufacturer no later than 60 working days after the final deadline for submission of papers.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.

**94214. Penalties.**

In addition to suspension or revocation of certification as provided in section 94212, ARB may seek penalties under Health and Safety Code Division 26, Part 4, Chapter 4, Article 3 commencing with section 42400, for any violation of these regulations.

NOTE: Authority cited: Sections 39600, 39601 and 41514.9 Health and Safety Code. Reference: Section 41514.9 Health and Safety Code.